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May 6, 1996

**VIA HAND DELIVERY**

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

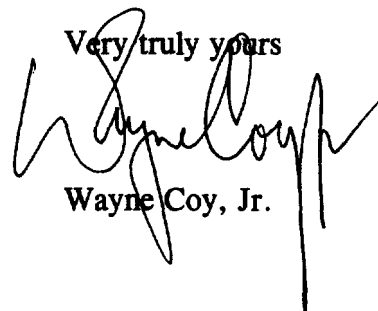
**Re: Comments in CS Docket No. 96-83**

Dear Mr. Caton

Transmitted herewith, on behalf of The National ITFS Association, are the original and five (5) copies of the Comments of the association in the above-referenced docket.

Should you have any questions with respect to this filing, please contact the undersigned.

Very truly yours



Wayne Coy, Jr.

Enclosures

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BEFORE THE  
**Federal Communications Commission**

In the Matter of	)	
	)	
Implementation of Section 207 of the	)	CS Docket No. 96-83
Telecommunications Act of 1996	)	
	)	
Restrictions on Over-the-Air	)	
Reception Devices: Television Broadcast	)	
and Multichannel Multipoint Distribution	)	
Service	)	

To: The Commission

**COMMENTS**

The National ITFS Association ("NIA"), through its counsel, hereby provides its Comments in the above-captioned proceeding, generally in support of the Notice of Proposed Rulemaking as adopted April 2, 1996 implementing Section 207 of the Telecommunications Act of 1996.

**BACKGROUND**

1. NIA is the only national association representing the interests of all of the present, future and yet identified permittees and licensees of Instructional Television Fixed Service ("ITFS") facilities. Its members are the universities, schools, and public broadcasters who are providing a wide variety of desperately needed educational services to their member or contract

learning sites. In many cases a partnership with commercial multichannel video programming providers is an absolute necessity before such facilities can be constructed and operated. Continuing growth and competitiveness of its commercial partners is critical to the further distribution of the educational services. NIA has participated in all Rulemakings before the Commission over the years in any matter affecting the development and implementation of the ITFS spectrum.

2. In this proceeding, Notice of Proposed Rulemaking in CS Docket No. 96-83, the Commission has before it the delicate task of balancing the needs of an emerging telecommunications industry, namely the Multipoint Distribution Service ("MDS") and the Multichannel Multipoint Distribution Service ("MMDS") and the related ITFS Service, with the need for local zoning and private zoning regulations relating to the health and safety of the public. In this particular case, the FCC's job is somewhat easier since the Congress has directed the Commission to remove obstacles not affecting health and safety from a subscriber's ability to receive multichannel video programming.

#### DISCUSSION

3. The number and types of different zoning regulations as promulgated by local, county, state, and private entities are endless in variation and contradiction. The age of some of the regulations alone would suggest that the regulations are not keeping up with the public's desire to receive multichannel video from a variety of sources, often necessitating the use of receive equipment unknown at the time of the enactment of the laws. Although everyone would agree that preemption of local laws is a drastic step, there are cases, such as here, where is no other choice.

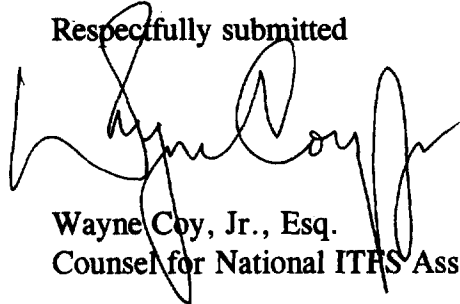
First, if the industry is to become truly competitive with Direct Broadcast Satellite ("DBS") and wired cable in the delivery of multichannel video programming, transmission and receiving equipment needs to be manufactured with the knowledge that it will have universal application. Secondly, the subscribers need to know that equipment be installed at their homes to receive the particular package of programming will not cause them a zoning problem. Third, the playing field between the MDS/MMDS and DBS needs to be level so that they can truly compete without local interference or misdirection. In IB Docket No. 95-59, the FCC provided for a similar preemption for DBS. It should do the same for MDS/MMDS in this proceeding. Fourth, DBS and MDS/MMDS must use similar rooftop or pole-mounted antennas to receive the desired signals directly. The antennas cannot be buried or mounted on set tops. They must be outside, and have a direct line-of-sight view of the transmitted signal. Allowing local regulators or private land developers to inhibit the deployment of antennas for other than health or safety reasons would lead to a crazy patch-work coverage and resulting economic turmoil in these industries.

4. Although most ITFS operators that now operate systems without commercial partners generally limit the receipt of their signals to member institutions and are not interested, at the present time, in reaching individual homes, that could change in the future providing distance learning at a far wider variety of receive sites than those now in use. As the FCC is well aware, over 90% of the ITFS applications now on file are accompanied by a contract for the use of excess capacity by a commercial operator. There is no logical reason not to include ITFS transmission/receipt in the regulations so that this expansion of vitally needed services can also proceed without further need to revisit the preemption provision later.

## CONCLUSIONS

5. Since the educational institutions and the ITFS facilities are critically important to the development of the MDS/MMDS industries, and since the partnerships formed in pursuit of that development will provide the much needed support for their educational efforts, and since the growth and health of the MDS/MMDS industry is absolutely necessary is the essential underpinning for the future, NIA enthusiastically supports the implementation of Section 207 of the Telecommunications Act of 1996 and the resulting preemption of local zoning regulations and private land restrictions that otherwise inhibit or prevent effective competition of the MDS/MMDS industry.

Respectfully submitted



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